

JSC INTERVIEW ROUND: APRIL 2023

CANDIDATE: MS SANDISWA MFENYANA

COURT FOR WHICH CANDIDATE APPLIES: NORTH WEST HIGH COURT, MAHIKENG

1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments:

1.1. The candidate holds the following qualifications:

1.1.1. B.Juris – University of KwaZulu Natal (1994);

1.1.2. LLB – University of KwaZulu Natal (1996);

1.1.3. LLM – University of Pretoria (2007);

1.1.4. Post Graduate Certificate in Legal Aspects of E-commerce – (2002);

1.1.5. Certificate in Energy Law – (2014); and

1.1.6. Certificate in Air, Space and Telecommunications Law – (2014).

2. The candidate's integrity and ethics:

2.1. There are no circumstances known to the reviewer that would suggest that the candidate is not a person of integrity with a reputation for ethical behaviour.

3. Whether the candidate's appointment would help to achieve an appropriate racial and gender composition on the bench:

3.1. There are currently four full-time judges on the North West Division comprising:

3.1.1. 1 black African women;

3.1.2. 2 Coloured men; and

3.1.3. 1 white woman.

3.2. The candidate is a black woman.

4. The maximum time period the candidate could serve if appointed:

4.1. Section 176(2) of the Constitution provides that all judges other than Constitutional Court judges "*hold office until they are discharged from active service in terms of an Act of Parliament.*" The Act in question is the Judges Remuneration and Conditions of Employment Act 47 of 2001.

4.2. Section 3(2)(a) of the Act provides that, subject to section 4(4), a judge will ordinarily be discharged from active service upon reaching the age of 70 if, by that date, they have completed a period of active service of not less than ten years. If not, they will be discharged from active service after having completed ten years of active service.

4.3. Section 4(4) allows for a judge who reaches the age of 70 to continue serving until the age of 75 if, at the time of turning 70, they have not yet served 15 years' active service.

4.4. The candidate is 50 years of age.

4.5. If appointed, the candidate could serve up to 20 years actively in office.

5. The candidate's personal commitment to the values of the constitution:

5.1. The candidates' commitment to the Constitution is demonstrated in her interim order in *Itokelle Clinix Private Hospital and Another versus DP Mofokeng and 3 others*, unreported decision in the North West Division, and in the judgment of *Makana Unity League v Makana Municipality*.

6. The candidate's knowledge of the law, including constitutional law:

6.1. The candidate has extensive knowledge of the law including constitutional law. The judgment in the *Makana Unity League v Makana Municipality* is an indication of the candidate's knowledge of Section 24 of the Constitution. The *Itokelle Clinix* matter involved Section 27 rights of the Constitution.

7. Judgments of the candidate that have been overturned, upheld or commented on, on appeal:

7.1. The candidate has referred to a number of matters which were overturned on appeal namely:

7.1.1. *Hattingh v Summermina* – overturned by the full court;

7.1.2. *DL v MEC for Health, EC* – overturned by the SCA;

7.1.3. *Malao v MEC of Education* – overturned by the SCA; and

7.1.4. *Nondonga v MEC for Health EC* – overturned by full bench.

8. The extent and breadth of the candidate's professional experience:

8.1. The candidate has a long professional career and many months of experience as an Acting Judge. The candidate has not been with the North West Division for long but in the short period she has been with the North West Division, she has demonstrated concomitant knowledge of the law, communication skills and the ability to manage court proceedings.

8.2. The candidate has extensive professional experience and has held diverse positions in law as highlighted in her *curriculum vitae*.

8.3. The candidate has extensive professional experience as an Acting Judge. The candidate has been acting as a Judge in the High Court since 2018 and is currently an Acting Judge in the North West Division.

9. The candidate's linguistic and communication skills:

9.1. The candidate's linguistic and communications skills are excellent.

9.2. The orders and the judgments of the candidate are clear, concise and reflect a thorough knowledge of the papers before the court and she properly applies the applicable legal principles.

10. The candidate's ability to produce judgments promptly:

10.1. It appears from the judgments reviewed that judgments are handed down promptly.

11. The candidate's ability to conduct court proceedings fairly, efficiently and effectively:

11.1. The candidate has a reputation for being firm but fair.

- 11.2. The candidate has good knowledge of the law and the rules of court, is calm in court, and manages her court extremely well.
- 11.3. The candidate is well prepared and asks questions to clarify the matter before her. The candidate does engage counsel in a robust manner but not threatening or demeaning.
- 11.4. The candidate is courteous to counsel appearing before her. The candidate has an excellent temperament suiting a judicial officer.
- 11.5. The candidate manages her time in court effectively.

12. **The candidate's independent mindedness:**

- 12.1. The candidate has a reputation for independence.

13. **The candidate's administrative ability (other than in relation to court proceedings):**

- 13.1. The candidate is, according to her *curriculum vitae*, a director at an attorneys' firm. This fact indicates that the candidate has good administrative skills as she has been away from her practice for some time but there are no reports of complaints made to the law society as a result of her absence.

14. **The message that the candidate's appointment would send to the public at large:**

- 14.1. The appointment of the candidate would send a message to the community that the JSC is determined to appoint independent-minded judicial officers.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported decisions:

- 1.1. *Centre For Child Law and Others v Minister of Basic Education And others* 2020 (3) SA 141 (ECG)
- 1.2. *S v Toni* 2020 (1) SACR 369 (ECG)

2. Unreported Decisions:

In addition to the judgments submitted by the candidate the following judgments have been reviewed:

- 2.1. *Mlatsha v Msweli* 2020 JDR 0051 (ECB) (on appeal bench)
- 2.2. *Kulati v Minister of Police* 2020 JDR 0217 (ECP)
- 2.3. *Moerane v Buffalo City Metropolitan Municipality* 2020 JDR 0313 (ECG) (on appeal bench)
- 2.4. *Member of the Executive Council for Health, Eastern Cape Province v XM* 2020 JDR 0463 (ECB)
- 2.5. *Zitumane v Mtshayeni* 2020 JDR 0479 (ECB)
- 2.6. *Van Rensburg v Van Rensburg* 2020 JDR 0481 (ECG)
- 2.7. *Veyitshile v MEC for Health, EC Province* 2020 JDR 0521 (ECB)
- 2.8. *Wardle v The Minister of Police* 2019 JDR 0447 (ECP) (on appeal bench)
- 2.9. *Nqinileyo v Minister of Police* 2019 JDR 0611 (ECB)
- 2.10. *Ntlangeni v Minister of Police* 2019 JDR 0612 (ECP)

2.11. *Tetani v Buffalo City Metropolitan Municipality* 2019 JDR 2284 (ECG)

2.12. *Itokelle – Clinix Private Hospital Mahikeng and Another v Dingaam Petrus Mofokeng – North West High Court*, Case No: UM189/2022

3. Judgments upheld on appeal:

3.1. *S v Zide* (appeal dismissed *S v Zide* 2018 JDR 0413 (ECM))

4. Judgments overturned on appeal:

4.1. *DL obo AL v MEC Health, Eastern Cape (appeal upheld Member of the Executive Council for Health, Eastern Cape v DL obo AL* (117/2020) [2021] ZASCA 68 (3 June 2021)